



August 7, 2000

Ms. Sue M. Lee  
Henslee, Fowler, Hepworth & Schwartz  
Attorneys at Law  
800 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2000-2963

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 137795.

The Bartlett Independent School District (the "district"), which you represent, received two requests from the same individual for information regarding an incident involving the requestor's child. You claim that the requested information is excepted from disclosure pursuant to Government Code sections 552.101, 552.107, 552.114, and 552.117 and under Family Code section 261.201. You have submitted the responsive information for our review. We have considered the exceptions you claim and reviewed the submitted information.

We begin by addressing your section 552.101 claim. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201 of the Family Code provides in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

You state that the submitted information pertains to a report and subsequent investigation of suspected child abuse conducted pursuant to chapter 261 of the Family Code. You explain that the information, which has been submitted to Child Protective Services, was developed during the investigation of the alleged abuse. As such, you argue the information is confidential under section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

In the instant case, however, the submitted information consists of student education records which are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. "Education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Section 552.114(a) of the Government Code requires that the district withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Further, section 552.026 provides that "chapter [552] does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." This office generally applies the same analysis under section 552.114 and FERPA.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332

(1982), 206 (1978). Unless the information personally identifies particular students, it is not protected from disclosure under FERPA.

FERPA additionally provides that “[n]o funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, *the right to inspect and review the education records of their children.*” 20 U.S.C. § 1232g(a)(1)(A) (emphasis added).

In this instance, we conclude FERPA operates to allow parental access to the student’s education records.<sup>1</sup> *See Belanger v. Nashua, New Hampshire, Sch. Dist.*, 856 F. Supp. 40 (D.N.H. 1994) (district records relating to student’s juvenile court proceedings were “education records” which parent was entitled to access irrespective of state confidentiality law). Thus, you must release the education records concerning the requestor’s child to the requestor. However, the student records also contain information regarding other students. As these students could be personally identified from the information presented, pursuant to FERPA, you must redact the names of these other students prior to disclosing the information to the requestor. For your reference, we have marked the information which must be redacted.

You argue that a portion of the submitted information is excepted from public disclosure under Government Code sections 552.107 and 552.117. Generally, exceptions to disclosure under the Act do not apply to a student’s or parent’s request for educational records pursuant to FERPA. *See Open Records Decision No. 431* (1985). Thus, we do not consider your section 552.117 claim. However, this office has been informed by the Family Policy Compliance Office of the United States Department of Education that a parent’s right to information about his child under FERPA does not prevail over a school district’s right to assert the attorney-client privilege. Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, United States Department of Education, to Loretta R. DeHay, Assistant

---

<sup>1</sup>We additionally note that if the investigation has been referred to the Department of Protective and Regulatory Services (the “department”), a parent who is a requestor may be entitled to access to the department’s records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

Attorney General, Office of the Texas Attorney General (Dec. 1994). Thus, we will consider your section 552.107(1) claim.

Section 552.107(1) excepts from disclosure information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. See Open Records Decision No. 574 at 5 (1990). When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. See Open Records Decision No. 574 at 3 (1990). In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* You explain that the submitted information contains legal advice regarding the investigation given by an attorney of the district. You state that the communication was made in confidence in furtherance of the attorney rendering professional legal services to the district. We agree that the information you have marked is excepted from disclosure under subsection 552.107(1) as confidential client communications or an attorney's legal advice. We have marked the information that the district may withhold pursuant to this section.

We also note that the submitted information contains social security numbers. A social security number or "related record" may be excepted from disclosure under Government Code section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have marked the social security numbers which may be require redaction prior to the release of the remaining information.

In summary, after redacting the names of the other students, you must release the student records of the requestor's child to the requestor. You may withhold the information we have marked as excepted from disclosure under section 552.107(1). Additionally, the social security numbers are confidential if they were obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. See 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994).

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 137795

Encl. Submitted documents

cc: Ms. Robin Smith  
Route 3 Box 56 North  
Rockdale, Texas 76567  
(w/o enclosures)